

ORDER NO. 1602

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton;
Tony Hammond; and
Robert G. Taub

Market Dominant Product Prices
Inbound Market Dominant Multi-Service Agreements
with Foreign Postal Operators
PostNL – United States Postal Service
Bilateral Agreement (MC2010-35)
Negotiated Service Agreement

Docket No. R2013-4

ORDER APPROVING AN ADDITIONAL INBOUND MARKET DOMINANT
MULTI-SERVICE AGREEMENT WITH FOREIGN POSTAL OPERATORS 1
NEGOTIATED SERVICE AGREEMENT
(WITH ROYAL POSTNL BV)

(Issued December 28, 2012)

I. INTRODUCTION

On November 15, 2012, the Postal Service filed notice, pursuant to 39 CFR 3010.40 *et seq.*, of a Type 2 rate adjustment concerning the inbound portion of a

bilateral agreement with Royal PostNL BV (PostNL) (Agreement).¹ The Postal Service seeks to include the Agreement within the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 (MC2010-35, R2010-5, and R2010-6) product. For the reasons discussed below, the Commission approves the request.

II. BACKGROUND

Product history. The Commission approved the addition of the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product to the market dominant product list in Order No. 549, following consideration of the Postal Service's request in Docket No. MC2010-35.² In companion dockets, the Commission concurrently approved the inclusion of two agreements within the new product.³ The Commission later approved the addition of other agreements.⁴

Instant agreement. The Agreement under consideration is the successor to the TNT Agreement. Both the instant Agreement and the TNT Agreement are with the postal operator of the Netherlands, however, the Postal Service's contracting partner in the TNT Agreement was TNT Post, a subsidiary of the postal operator for the Netherlands, while the instant Agreement is with PostNL, the current postal operator of the Netherlands. *Id.* at 10. The Agreement covers inbound Letter Post, in the form of letters, flats, small packets, bags, and International Registered Mail service for Letter Post. *Id.* at 4.

¹ Notice of United States Postal Service of Type 2 Rate Adjustment, and Notice of Filing Functionally Equivalent Agreement, November 15, 2012 (Notice). The Notice was filed pursuant to 39 CFR 3010.40 *et seq.* *Id.* at 1.

² Docket Nos. MC2010-35, R2010-5, and R2010-6, Order Adding Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 to the Market Dominant Product List and Approving Included Agreements, September 30, 2010 (Order No. 549).

³ See *id.* at 2. The original agreements were the Strategic Bilateral Agreement between United States Postal Service and Koninklijke TNT Post BV and TNT Post PakketSERVICE Benelux BV (TNT Agreement) and the China Post Group–United States Postal Service Letter Post Bilateral Agreement.

⁴ See Notice at 2 for the list of previously-approved agreements to which the Postal Service refers in its functional equivalency analysis. These are also referred to in this Order as the previously approved agreements.

Effective date; duration. Rates under the Agreement are intended to take effect January 1, 2013 following expiration, on December 31, 2012, of the rates now in effect under the TNT Agreement. *Id.* at 3. The Agreement is to remain in effect for two years, unless terminated earlier. *Id.* Attachment 2 at 7 (Article 23).

The instant docket. The Postal Service's filing includes a Notice, supporting documentation, and an Application for Non-Public Treatment. It also includes requests for approval of an exception to the data collection requirements in rule 3010.43 and seeks, for all agreements added to the Mail Classification Schedule (MCS) as Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators, a blanket exception to the service performance reporting requirements in rule 3055.3(a)(3). *Id.* at 12. The requests are based on the Postal Service's proposal to report data and information related to the Agreement in the Annual Compliance Report (ACR). *Id.*

In Order No. 1552, the Commission provided public notice of the Postal Service's filing, established a docket for consideration of the filing's consistency with applicable statutory policies and Commission regulations, appointed a Public Representative, and provided interested persons with an opportunity to comment.⁵

III. THE POSTAL SERVICE'S POSITION

Functional equivalence. The Postal Service asserts that the Agreement is functionally equivalent to the China Post 2010 Agreement, the TNT Agreement, Hongkong Post 2011 Agreement, and the China Post 2011 Agreement because its terms fit within the proposed MCS language for Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1. Notice at 8-9. It therefore states that the Agreement, along with the referenced agreements, conform to a common description. *Id.* at 9. The Postal Service also asserts that all five agreements are constructed from a similar template; contain many similar terms and conditions; and provide rates for Letter

⁵ Notice and Order Concerning Type 2 Rate Adjustment and Royal PostNL BV Negotiated Service Agreement, November 20, 2012 (Order No. 1552).

Post tendered to the Postal Service from each foreign operator's territory, along with ancillary services to accompany inbound Letter Post; are with a foreign postal operator. *Id.* It therefore claims that because the agreements incorporate the same attributes and methodology, the relevant characteristics are similar, if not the same. *Id.*

The Postal Service identifies and summarizes differences that distinguish the Agreement from previous agreements. *Id.* at 10-12. However, it asserts that despite these differences, the Agreement is functionally equivalent to the previously approved agreements referenced in its Notice, and asserts that the differences do not affect either the fundamental service being offered or the fundamental structure of the contracts. *Id.* at 12.

Statutory criteria. Under 39 U.S.C. § 3622(c)(10), the Commission assesses whether the agreement (1) improves the net financial position of the Postal Service or enhances the performance of operational functions, (2) will not cause unreasonable harm to the marketplace, and (3) will be available on public and reasonable terms to similarly situated mailers. The Postal Service asserts, with respect to the first criterion, that the negotiated rates in the Agreement represent an "improvement over default rates established under the Universal Postal Union (UPU) Acts for inbound Letter Post items." *Id.* at 1. It also identifies three components of the Agreement that are expected to enhance operational performance: the parties have agreed to work together to revise the Accounting Business Rules between the Parties to include changes in settlement related to the PostNL Agreement; the parties are encouraged, but not required, to consider offering one another incentives for optional activities, such as sortation or separation changes; and Annex 3 provides suggested Office of Exchange Routing details, and information about the Offices of Exchange that registered mail can be entered into. *Id.* at 4-5.

With respect to the second criterion, the Postal Service presents several reasons why the instant Agreement will not result in unreasonable harm to the marketplace, including PostNL's status as the only entity in a position to avail itself of an agreement

of this type and the role of the Postal Service and PostNL as their countries' designated operators for exchange of mail. *Id.* at 5.

The Postal Service asserts that the third criterion is inapplicable, as there are no similarly situated mailers. *Id.*

Reporting exceptions. Rule 3010.43 requires the Postal Service to submit a detailed data collection plan. In lieu of a special data collection for the Agreement, the Postal Service states that it intends to provide information via the ACR and, pursuant to this alternative, to provide any necessary information about mail flows in the course of the annual review process. *Id.* at 7. The Postal Service further asks that the Commission except the Agreement from the separate performance reporting requirement under 39 CFR 3055.3(a)(3). *Id.* It notes that the Commission has granted such exceptions for similar agreements. *Id.*

The Postal Service also asks that the Commission approve an exception to the performance reporting requirements under 39 CFR 3055.3(a)(3) for all contracts added to the MCS as Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators because the performance of the products covered by those agreements is already included in the measurement of other products. *Id.* at 12.

IV. COMMENTS

The Public Representative filed comments pursuant to Order No. 1552.⁶ No other comments were received.

Functional equivalency. The Public Representative reviews the differences the Postal Service identifies between the Agreement and the TNT Agreement, and concludes that these differences do not affect the similarity of the cost characteristics. *Id.* He therefore considers the instant Agreement to be functionally equivalent to the TNT Agreement. *Id.* at 4.

⁶ Public Representative Comments on Postal Service Notice Concerning Type 2 Rate Adjustment and Royal PostNL 2013 Bilateral Negotiated Service Agreement, November 30, 2012 (PR Comments).

Statutory criteria. The Public Representative concludes that the negotiated rates in the Agreement will improve the net financial position of the Postal Service. *Id.* at 3. This is based on his assessment of the results of replacing the negotiated rates in the financial model with the calendar year 2013 rates and an estimate of the calendar year 2014 rates for target system countries. *Id.* The Public Representative states that with these changes, the negotiated rates generate additional contribution (*i.e.*, a smaller negative contribution) to the Postal Service than would the applicable UPU terminal dues rates. *Id.*

V. COMMISSION ANALYSIS

The Commission has reviewed the Notice, the Agreement, the financial analyses provided under seal, and comments filed by the Public Representative.

Statutory responsibilities. Under the statutory and regulatory provisions of 39 U.S.C. § 3622(c)(10) and 39 CFR 3010.40(a), the Commission's approval requires a finding that the Agreement either improves the net financial position of the Postal Service or enhances the performance of various operational functions and does not cause unreasonable harm to the marketplace. The Agreement also must be available on public and reasonable terms to similarly situated mailers. 39 CFR 3010.40(c).

The Commission finds, with respect to the first criterion, that the negotiated rates in the Agreement will improve the net financial position of the Postal Service, as they will generate higher revenues, contribution, and cost coverage than otherwise applicable UPU default rates. It also finds, with respect to this criterion, that the Agreement includes provisions intended to enhance performance. The Commission finds, with respect to the second criterion, that the Agreement will not cause unreasonable harm to the marketplace, given the impact of the contracting parties' status as designated operators on the market and the consequences this has on the marketplace with respect to the availability of the Agreement to similarly situated mailers. The Commission finds the third criterion inapplicable.

Functional equivalence. The Commission finds that the Agreement is similar to other agreements with other foreign postal operators included within the relevant product. Differences between the Agreement and the TNT Agreement do not foreclose a finding that the agreements are functionally equivalent. The Commission therefore concludes that the Agreement may be included in the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product.

Reporting exceptions. The Postal Service's proposes that no special data collection plan be created for the Agreement, essentially seeking a waiver of section 3010.43's data collection reporting requirements. Notice at 7. Instead, it intends to report information under the Agreement through the Annual Compliance Report and agrees to provide information about mail flows from PostNL within the course of the ACR review process. *Id.* Given the limited nature of this negotiated service agreement, with a foreign postal operator, the Commission grants the waiver of section 3010.43

The Commission also approves the Postal Service's request for an exception for this Agreement from the separate service performance reporting requirements in 39 CFR 3055(a)(3). The Commission has granted exceptions of this type for other negotiated service agreements with other foreign postal operators on grounds that substantially all of their components are part of a grouping of products already being measured.

Lastly, the Postal Service requests a blanket exception to the performance reporting requirements for all Inbound Market-Dominant Multi-Service Agreements with Foreign Postal Operators. *Id.* at 13. The Commission previously approved this request, stating: "It would appear that functionally equivalent agreements would qualify for the [section] 3055(a)(3) exception. Future agreements that fall within the parameters of the Inbound Market-Dominant Multi-Service Agreements with Foreign Postal Operators 1 product are excepted from the performance reporting requirements." Order No 996, Docket No. R2012-2, Order Concerning an Additional Inbound Market dominant Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement, November 23, 2011, at 7.

Follow-up submissions. The Postal Service shall promptly notify the Commission if the effective date of the Agreement differs from the intended effective date. The Postal Service shall also promptly notify the Commission if the Agreement terminates earlier than intended. In addition, within 30 days of the Agreement's expiration date, or early termination, the Postal Service shall file costs, volumes, and revenues associated with the Agreement.

Conclusion. The Commission finds that the Agreement satisfies relevant statutory criteria and approves its inclusion within the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product.

VI. ORDERING PARAGRAPHS

It is ordered:

1. The Commission approves the Type 2 rate adjustment requested in this docket.
2. The Commission approves the inclusion of the Agreement within the Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 (MC2010-35) product.
3. The Postal Service shall notify the Commission if the effective date of the Agreement differs from the intended effective date.
4. The Postal Service shall promptly notify the Commission if the Agreement terminates early.
5. Within 30 days of expiration, or early termination, of the Agreement, the Postal Service shall file costs, volumes, and revenues associated with the Agreement.

6. The Commission grants the Postal Service's request for an exception to the requirement in 39 CFR 3010.43 that it prepare a separate data collection plan for this Agreement, subject to alternative reporting in the Annual Compliance Report and cooperation in filing pertinent information with the Commission.
7. The Commission grants the Postal Service's request for an exception from the separate service performance reporting requirements in 39 CFR 3055(a)(3), subject to the inclusion of pertinent information on the terms stated in this Order.

By the Commission.

Shoshana M. Grove
Secretary